

Cunningham



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Connie Hall Company

File: B-223440

Date: July 9, 1986

DIGEST

1. Protest is dismissed without General Accounting Office (GAO) obtaining protest report from contracting agency and without granting bid protest conference requested by protester where it is clear on face of protest that protest has no merit. Consequently, conference would serve no useful purpose.
2. Since invitation for bids (IFB) for electrical work did not clearly state that multiple awards were prohibited and multiple awards would be financially advantageous to the contracting agency, these awards are legally proper, even if the agency, for whatever reason, initially proposed to make single award.
3. Argument that multiple contracts will be impractical and costly compared with award of a single contract to protester essentially alleges that IFB for work was defective in permitting multiple awards. This alleged defect was not timely protested before bid opening under GAO's Bid Protest Regulations. Alternatively, if protester is really arguing that substantial monetary adjustments should be added to proposed awardees' bids for multiple contracts, addition would be improper because IFB did not provide for it.

DECISION

Connie Hall Company (Connie Hall) has protested the decision of the Department of the Army not to accept the company's bid under invitation for bids (IFB) No. DACA05-86-B-0121 for electrical work at the Sierra Army Depot, California. We dismiss the protest under section 21.3(f) of our Bid Protest Regulations without obtaining a report from the Army or having a conference on the protest, as requested by the protester, because it is clear on the face of the protest that the protest has no merit, and a conference would, therefore, serve no useful purpose. See DBMS, Inc., B-222605, May 28, 1986, 86-1 C.P.D. ¶ 498.

The IFB established three bidding schedules ("A," "B," and "C") for the work. Schedules "A" and "B" each contained two separate line items of work; in addition, only schedule "A" contained two "additive" items for additional work that was required to be priced by bidders. Schedule "C"

was a combined schedule which showed all four of the basic items shown on schedules "A" and "B" plus the two additive items. Under the IFB, bidders were free to bid on a single schedule or any combination of schedules.

Connie Hall was the low bidder on combined schedule "C" after another schedule "C" bidder was allowed to withdraw its bid. Nevertheless, Connie Hall's bid for schedule "C" was greater (by about \$70,000) than the combined bids for each of the other low bidders on schedules "A" and "B." Consequently, the Army has proposed to make multiple awards under this IFB: one to Mid-Valley Electric Company for schedule "A" and another to Roebbelen Engineering, Inc., for schedule "B."

Connie Hall argues that the Army's proposed awards are improper because: (1) the IFB allegedly "implies" that only a single award, as initially contemplated by the Army, is to be made under schedule "C" and does not permit multiple awards; and (2) multiple contracts are impractical for the work to be done and will ultimately cost the Army more than the present cost differential of about \$70,000 existing between Connie Hall's bid and that of the other two, combined bids. The protester requests that award be made to it or, alternatively, that the current solicitation be canceled and the project recompeted. In addition, the protester asks that it be awarded the costs of preparing its bid and of filing and pursuing this protest.

We have held that sealed-bid contracts must be awarded to the government's best price advantage, whether that advantage arises from awarding a single contract or awarding multiple contracts, and that where multiple awards are not prohibited by the IFB (and would result in the lowest overall cost) multiple awards are to be made. Talbott Development Corporation, B-220641, Feb. 11, 1986, 86-1 C.P.D.
¶ 152.

Contrary to the protester's position, we find that the IFB did not state that multiple awards were prohibited. Connie Hall's use of the word "implies" effectively concedes, in our view, that the IFB did not prohibit multiple awards. The "additive items" provision of the IFB does speak in singular terms ("low bidder," "conforming responsible bidder") when mentioning the award. That provision, however, does not prohibit multiple awards and was drafted apparently with the intent only to prescribe award possibilities in the event bids exceeded available government funds rather than to state whether one or more awards could be made. Moreover, the use of these singular terms to describe the award cannot alter the right of the Army to make multiple awards under the following IFB provision which was specified under each schedule:

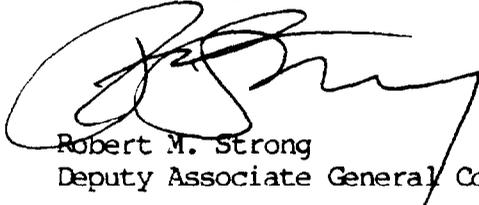
". . . the work will be awarded to the lowest, responsible and responsive bidders for either Schedule A, B, or C whichever is in the best interest of the Government. Bidders may submit bids on single Schedule only or any combination of Schedules."

Obviously, the Army's use of the plural form of bidders contemplated that more than one award could be made; also, bidders were allowed to bid on only one schedule although both schedules might be awarded--thus, further implying that more than one award might be made. It is clear, therefore, that the only purpose of this provision--repeated under each schedule--was to inform bidders of the general basis for the award(s).

Therefore, the Army was legally permitted to make multiple awards under the IFB even if the Army, for whatever reason, initially proposed to make one award to Connie Hall as stated by the protester.

As to the protester's argument that multiple contracts will be impractical and costly compared with award of a single contract, this argument essentially is that the IFB was defective because the IFB otherwise permitted multiple awards--an alleged defect which should have been raised before bids were opened under section 21.2(a)(1) of our Bid Protest Regulations (4 C.F.R. § 21.2(a)(1) (1986)). Consequently, this issue is untimely raised and will not be considered. In the alternative, if Connie Hall is really arguing that a substantial monetary adjustment could properly be added to the other bids to compensate for the alleged extra costs associated with multiple contracts, this addition would be improper since the IFB did not provide for it, and we have held that an IFB must clearly state the basis on which bids will be evaluated for award. Deterline Corp., B-208986, Apr. 21, 1983, 83-1 C.P.D. ¶ 427.

Consequently, we dismiss the protest and deny the claim for costs.



Robert M. Strong
Deputy Associate General Counsel